

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

JAMES B. JEFFERIES, ) Civil Action No. 8:07-2867-MBS-BHH  
                        )  
Plaintiff,           ) )  
                        )  
v.                    ) )  
                        )  
MICHAEL J. ASTRUE, ) )  
Commissioner of Social Security, ) )  
                        )  
Defendant.           )

**REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE**

This case is before the Court for a report and recommendation pursuant to Local Rule 73.02(B)(2)(a), D.S.C., concerning the disposition of Social Security cases in this District, and Title 28, United States Code, Section 636(b)(1)(B).<sup>1</sup>

On March 28, 2008, Defendant filed a Motion for Entry of Judgment with Remand Pursuant to Sentence Four of 42 U.S.C. § 405(g). Plaintiff has indicated his consent to the remand. [Doc. 22]. For good cause shown, the Court hereby recommends REVERSAL of the Commissioner's decision in this matter under sentence four of 42 U.S.C. § 405(g), and recommends that the cause be REMANDED to the Commissioner for further administrative proceedings.

Upon remand, the Commissioner should evaluate the medical opinion evidence, including the opinion of Dr. Swad, under 20 C.F.R. §§ 404.1527 and 416.927 and Social Security Ruling 96-2p. The Commissioner should also evaluate the credibility of Plaintiff's subjective complaints under 20 C.F.R. §§ 404.1529 and 416.929 and Social Security

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<sup>1</sup> A report and recommendation is being filed in this case, in which one or both parties declined to consent to disposition by the magistrate judge.

Ruling 96-7p, and assess Plaintiff's residual functional capacity under Social Security Ruling 96-8p. If necessary, the Commissioner should obtain medical expert evidence to determine the nature and severity of Plaintiff's impairments.

If benefits are awarded to Plaintiff, Plaintiff's counsel must file his petition for attorney's fees under 42 U.S.C. § 406(b)(1) "within sixty (60) days after the issuance of the notice of award of benefits from the Social Security Administration." See *Barroll, Petitioner, and Wildt, Plaintiff, v. Astrue*, 8:05-cv-00951-MBS (D.S.C. Oct. 17, 2007) (order allowing additional time to file a petition for 42 U.S.C. § 406(b) fees) (unpublished); Local Rule 83.VII.07(A) of the Local Civil Rules for the United States District Court, District of South Carolina (2006).

IT IS SO RECOMMENDED.

s/Bruce H. Hendricks  
United States Magistrate Judge

April 23, 2008

Greenville, South Carolina